

## Natural Resources Conservation Service, USDA

## § 624.4

person of payments for cost-share practices or easements for the purpose of obtaining a payment to which a person would otherwise not be entitled.

(c) An owner of land subject to this part who succeeds to the responsibilities under this part shall report in writing to NRCS any interest of any kind in the land subject to this part that is retained by a previous participant. Such interest includes a present, future or conditional interest, reversionary interest or any option, future or present, with respect to such land and any interest of any lender in such land where the lender has, will, or can obtain, a right of occupancy to such land or an interest in the equity in such land other than an interest in the appreciation in the value of such land occurring after the loan was made. A failure of full disclosure will be considered a scheme or device under this section.

### § 623.22 Filing of false claims.

If it is determined by NRCS that any participant has knowingly supplied false information or has knowingly filed a false claim, such participant shall be ineligible for any payment under this part. False information or false claims include claims for payment for practices which do not meet the specifications of the applicable WRPO. Any amounts paid under these circumstances shall be refunded, together with interest as determined by NRCS, and any amounts otherwise due such participant shall be withheld.

## PART 624—EMERGENCY WATERSHED PROTECTION

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AUTHORITY: Sec. 216, Pub. L. 81-516, 33 U.S.C. 701b-1; and sec. 403, Pub. L. 95-334, 16 U.S.C. 2203, 5 U.S.C. 301.

SOURCE: 46 FR 56577, Nov. 17, 1981, unless otherwise noted.

### § 624.1 Purpose.

This part sets forth the requirements and procedures for Federal assistance administered by the Natural Resources Conservation Service (NRCS) under section 216, Pub. L. 81-516 and section 403 of Title IV of the Agricultural Credit Act of 1978, Pub. L. 95-334.

### § 624.2 Objective.

The objective of the Emergency Watershed Protection (EWP) program is to assist in relieving imminent hazards to life and property from floods and the products of erosion created by natural disasters that cause a sudden impairment of a watershed.

### § 624.3 Scope.

(a) Authorized EWP technical and financial assistance may be made available when an emergency exists. Emergency water shed protection consists of emergency measures for runoff retardation and soil erosion prevention as needed to reduce hazards to life and property from floods, drought, and the products of erosion on any watershed impaired by a natural disaster.

(b) Technical assistance includes engineering and other technical expertise necessary for planning and installing emergency measures. Emergency watershed protection is authorized in the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

### § 624.4 Administration.

NRCS shall provide overall administrative directive and guidance for EWP. NRCS will transfer funds to the Forest Service (FS) of the U.S. Department of Agriculture (USDA) at the national level for work to be installed by FS or its cooperators. Under general program criteria and procedures established by NRCS, FS is responsible for administering EWP measures on National Forests and National Grasslands. FS is also responsible for emergency measures on all forested lands or rangelands within the National Forests, on adjacent rangelands that are administered under formal agreement with FS, and on other forest lands. On

these lands, emergency work is done by either NRCS or FS as mutually agreed. In carrying out their responsibilities, FS and NRCS work cooperatively with other Federal, State, and local government agencies.

**§ 624.5 Eligible emergencies, recipients, and assistance.**

(a) *Conditions of eligibility.* Emergency watershed protection assistance is made available when the following conditions of eligibility are determined to exist by the state conservationist. Procedures for providing emergency assistance vary according to whether the watershed emergency constitutes an exigency or a nonexigency situation. Emergency measures for both types of situations are those undertaken to remove or reduce hazards created by the disaster to safeguard life and property from flooding, drought, or the products of erosion.

(1) *Watershed emergency.* A watershed emergency exists when a natural occurrence causes a sudden impairment of a watershed that creates an imminent threat to life or property. To be eligible for assistance, the imminent threat to life or property must significantly exceed that which existed before the impairment.

(i) *Natural occurrence* includes but is not limited to floods, fires, windstorms, earthquakes, volcanic actions, and drought.

(ii) A *watershed impairment* exists when the ability of a watershed to carry out its natural functions is reduced to the extent of creating an imminent threat to life or property.

(iii) A *sudden watershed impairment* results from a single natural occurrence or a short-term combination of occurrences. Watershed impairments resulting from long-term combinations or series of natural or other occurrences are not considered sudden watershed impairments.

(iv) *Exigency and nonexigency situations.* Watershed emergencies are classified as either exigency or nonexigency situations.

(A) An *exigency* exists when the near-term probability of damage to life or property is high enough to demand immediate Federal action. An exigency continues to exist as long as the prob-

ability of damage continues at a high enough level.

(B) A *nonexigency* situation exists when the near-term probability of damage to life or property is high enough to constitute an emergency but not sufficiently high to be considered an exigency. A nonexigency situation continues to exist as long as the probability of damage remains high enough to be considered an emergency.

(v) *Changes in emergency situations.* Changes in the near-term probability of threat to life or property will be reflected by changes in the classification of emergencies. As the near-term probability that the threats will be realized is reduced because of emergency assistance or other factors, exigency and nonexigency situations will be appropriately reclassified. Similarly, as occurrences increase the probability of threats to life or property, situations previously considered nonemergencies will be appropriately reclassified as nonexigencies and previous nonexigency emergency situations will be appropriately reclassified as exigencies.

(vi) *Drought emergencies.* Assistance is available in drought emergencies when the eligibility criteria specified in this rule are met and the Agricultural Stabilization and Conservation Service (ASCS) determines that a drought emergency exists under regulations promulgated to carry out sections 401 and 402 of the Agriculture Credit Act of 1978 (Pub. L. 95–334).

(b) *Eligible recipients.* Include those public or private landowners, land managers, land users, or others who—

(1) Have a legal interest in or responsibility for the values threatened by a watershed emergency; and

(2) Have exhausted or have insufficient funds or other resources available to provide adequate relief from the applicable hazards. Interested persons other than Federal agencies must be represented by a project sponsor. Project sponsors must:

(i) Be a State or political subdivision of a State or a qualified Indian tribe or tribal organization;

(ii) Have legal authority and agree to use such authority to obtain needed landrights, water rights, and permits; and

(iii) Agree to provide for the operation and maintenance of completed emergency measures.

(c) *Eligible assistance.* (1) In an exigency—

(i) Federal emergency funds may bear up to 100 percent of the construction costs of emergency measures.

(ii) Funds must be obligated within 10 days after receipt of the emergency funds or after the date of the disaster event when conditions permit beginning construction activities, whichever is later.

(iii) Emergency work must be completed within 30 days after funds are obligated.

The NRCS Chief retains discretion to grant extensions for good cause. Documentation must support requests for extensions. Extensions may extend an additional 10 days for the obligation of funds and an additional 30 days for the completion of work.

(2) In a nonexigency—

(i) Federal emergency funds may bear up to 80 percent of the construction costs for emergency measures.

(ii) Funds must be obligated and construction completed within 220 consecutive calendar days after the date of receipt of funds. Extensions are permitted at the discretion of the NRCS Chief if unforeseen or uncontrollable events cause delays. A request for such an extension must be documented.

(3) Sponsors may provide their share of construction costs in the form of cash; in-kind services such as labor, equipment, etc.; or a combination of cash and in-kind services. Cost sharing is waived for measures to be installed on Federal lands such as national forests or national grasslands.

[46 FR 56577, Nov. 17, 1981, as amended at 48 FR 4448, Feb. 1, 1983]

#### § 624.6 Eligible measures.

(a) *Eligibility.* To be eligible for assistance a measure must—

(1) Retard runoff, prevent flooding, or prevent soil erosion;

(2) Reduce threats to life or property resulting from a watershed emergency;

(3) Be economically and environmentally defensible and sound from an engineering standpoint;

(4) Be limited to the minimum that will reduce applicable threats to a level

not to exceed that which existed before the impairment of the watershed;

(5) Yield beneficial effects to more than one individual except in an exigency; and

(6) Conform to rules and regulations published by NRCS for complying with Executive Order 11990, Protection of Wetlands, and Executive Order 11988, Floodplain Management.

(b) *Documentation.* (1) When an exigency does not exist, the economic rationale of proposed measures must be submitted in appropriate detail with the request for funds. Generally, the expected value of imminent damages (amount of damages multiplied by the near-term probability of their occurrence) must exceed the cost of emergency measures. Information provided in the request for emergency funds to support economic defensibility of the measures must include but is not limited to—

(i) Number and extent of values at risk because of the watershed impairment;

(ii) Estimated damages to the values at risk if the threat is realized;

(iii) Events that must occur for the threat to be realized and the estimated probability of their occurrence both individually and collectively; and

(iv) Estimates of the nature, extent, and cost of emergency measures to be constructed to relieve the threat.

(2) In nonexigency situations, the state conservationist shall also submit adequate information to substantiate the environmental defensibility of the emergency measures proposed for installation. This must include but is not limited to—

(i) Thorough descriptions of beneficial and adverse effects on environmental resources including fish and wildlife habitat;

(ii) Descriptions of water quality and water conservation impacts as appropriate; and

(iii) Analysis of effects on downstream water rights.

The Chief shall issue instructions as are necessary to determine the economic and environmental defensibility of measures proposed for installation consistent with this rule.

(c) *Implementation.* (1) When planning emergency measures, emphasis should

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be placed on measures that are the least expensive and most environmentally sound. The measures are to be accomplished by using the least damaging construction techniques and equipment that will retain as much of the existing characteristics of the channel and riparian habitat as possible. Emergency measure construction practices may include but are not limited to such things as seasonal construction, minimum clearing, reshaping soil, limiting excavation to one bank (on alternating sides where appropriate), and prompt revegetation of disturbed areas.

(2) Measures needed to offset adverse impacts should be planned for installation concurrent with installation of the emergency measures. If they cannot be installed then, plans should be included to ensure their installation within 30 days. Cost sharing for these measures is at the same rate as for the original emergency construction.

(3) An EWP team consisting of NRCS personnel from the National Office and the technical service center shall determine the eligibility of all permanent, enduring, or long-life measures or practices proposed for construction. The team shall determine the need for funds before any commitments are made.

(4) Where lands under jurisdiction of FS are involved, the team will be assisted by FS representatives of the National Office and area or regional offices. The team shall also be available, at the request of the state conservationists, regional foresters, and area directors, to help determine the eligibility of other EWP measures or practices and to assist with administrative details.

[46 FR 56577, Nov. 17, 1981, as amended at 48 FR 4448, Feb. 1, 1983]

## § 624.7 Limitations on use of emergency funds.

Emergency watershed protection funds may not be used to:

(a) Perform operation or maintenance (periodic work that is necessary to maintain the efficiency and effectiveness of a measure to perform as originally designed and installed).

(b) Solve watershed problems that existed before the disaster.

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(c) Repair, rebuild, or maintain private or public transportation facilities, public utilities, or similar facilities.

(d) Perform work on features of projects installed under the authority of Pub. L. 83-566, Pub. L. 78-534, Resource Conservation and Development, or measures installed by other Federal agencies. Exceptions may be made at the discretion of the Chief of NRCS.

(e) Construct works that would adversely affect downstream water rights.

(f) Make improvements to public or private property not essential to the reduction of threats caused by watershed improvement.

(g) Perform any work not determined to be economically and environmentally defensible under the provisions of this rule.

[46 FR 56577, Nov. 17, 1981, as amended at 48 FR 4448, Feb. 1, 1983]

## § 624.8 Environment.

Environmental aspects of emergency work are to be given careful consideration. A program environmental impact statement (EIS) for EWP work has been developed in compliance with section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91-190, 83 Stat. 852 (42 U.S.C. 4321 et seq.)). An environmental evaluation is to be prepared for all nonemergency situations. State conservationists shall notify concerned area and field offices of the Fish and Wildlife Service, the Environmental Protection Agency, and, through existing coordination mechanisms of State clearinghouses, the State fish and game and other appropriate agencies of anticipated EWP work. They shall invite the assistance of these agencies in preparing the environmental evaluation and in planning and implementing the emergency work. Archeological, historical, or other special expertise needed is to be solicited from appropriate agencies and groups. Environmental and other considerations are to be integrated into emergency work by using an interagency and interdisciplinary planning approach.

[48 FR 4448, Feb. 1, 1983]

**§ 624.9 Application.**

Sponsors may apply to any NRCS office for EWP assistance. NRCS shall help sponsors prepare their applications. The NRCS offices are defined in part 600 of this chapter. Information supplied should include the nature, location, and scope of the problems and the assistance needed.

**§ 624.10 Investigation and request for funds.**

(a) On receipt of an application for EWP, the State conservationist and regional forester or area director, where appropriate, shall immediately investigate the emergency situation to determine if EWP is applicable. In carrying out EWP work, State conservationists shall take into consideration two broad types or degrees of emergency situations:

(1) An imminent situation of unusual urgency—and exigency—and (2) an emergency requiring action but of less urgency than an imminent situation. (See § 624.5)

(b) Prompt remedial action to eliminate an imminent threat to loss of life

is to be provided when an exigency exists. The State conservationist shall notify Project Development and Maintenance and indicate the nature of the emergency and the estimated amount of funds needed. If funds are made available, the state conservationist may authorize actions necessary to remedy the emergency. The state conservationist shall confirm the situation in a memorandum to the Chief that explains the nature of the emergency, the location of the emergency, the kind of remedial work and funds needed, sponsors, description of potential damage, etc. In these situations, the memorandum from the State conservationist with its brief information constitutes the request for funds.

(c) If an exigency does not exist but the impairment justifies emergency assistance, the state conservationist shall submit a request for funds to the Chief within 60 days after the disaster event. Neither NRCS nor FS may commit funds until notified by the National Office of the availability of funds.